

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

APR 18 2008
CLERK, U.S. DISTRICT COURT
By _____ Deputy

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, : Civil Action No.: _____

ECF

v.

308 CV - 683 - B

DON L. LAMBERT, :

Defendants. :

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows against Defendant Don L. Lambert (“Lambert”):

SUMMARY OF ALLEGATIONS

1. In multiple Commission filings by Energytec, Inc. (“Energytec”), a Commission-reporting company based in Plano, Texas, Defendant Lambert misrepresented and omitted material facts about his background and experience while serving as an Energytec executive officer.
2. Energytec Commission filings purported to disclose Lambert’s employment history for “over five years” prior to his joining Energytec in 2002, stating that he had been self-employed by an oil-and-gas consulting and financial-advisory firm and that he received a J.D. in this period. In fact, the oil-and-gas consulting and financial-advisory firm did not exist until 2000. Moreover, the filings omitted to disclose that, during the same period, he was employed as a lawyer and that he surrendered his law-license in 1994 in a state-bar disciplinary proceeding.

Likewise, they omitted Lambert's securities-related felony conviction, his incarceration and supervised release for this crime, and his multiple bankruptcies, all of which occurred during the same period.

3. Lambert started working for Energytec in 2002, became its president in 2005, and became its CEO in 2006. He drafted, reviewed, or approved his biographical information in the Commission filings that form the basis of this complaint. Additionally, as CEO of Energytec, he certified that the Form 10-K for the period ended December 31, 2005, did not contain untrue or misleading statements of fact despite the fact that he knew that his biographical information omitted and misrepresented material information about his background.

4. By committing the acts alleged in this Complaint, Lambert directly and indirectly violated, and unless restrained and enjoined by the Court will continue to violate Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-14 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-14].

5. The Commission seeks judgment from the Court: (a) enjoining Lambert from future such violations; (b) requiring him to pay a \$50,000 civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and (c) permanently barring him from acting as an officer or director of any reporting company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 77u(d)(2)].

JURISDICTION AND VENUE

6. The Court has jurisdiction of this civil enforcement action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Lambert made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national

securities exchange in connection with the acts, transactions, practices, and courses of business alleged in this Complaint.

7. Venue lies in the Northern District of Texas pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because Lambert resides in this District in Terrell, Kaufman County, Texas.

THE PARTIES

8. The plaintiff is the Securities and Exchange Commission, which brings this civil enforcement action pursuant to the authority conferred on it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)].

9. Defendant Lambert, age 61, lives in Terrell, Texas. He became Energytec's president in 2005 and its CEO in 2006, serving in both capacities until his resignation on January 31, 2008. He held a Texas law license from 1973 to 1994.

FACTS

Background: Lambert's Multiple Bankruptcies and His Disciplinary History

10. Lambert has filed personal bankruptcy four times and has a significant disciplinary history. He filed bankruptcy in Georgia in 1985 and in Texas in 1998, 2000, and 2001. In 1993, the State Bar of Texas filed a disbarment action against him. In April 1994, he surrendered his law license to settle the bar proceeding. In an unrelated matter, on June 4, 1994, he was indicted on federal charges in the Southern District of Ohio for his role in a fraudulent securities offering. Lambert pleaded guilty to three counts of tax evasion and one count of fraud in that case and was sentenced in 1995 to 23 months in prison, followed by 36 months of supervised parole.

Lambert's Misleading Statements and Omissions in Energytec Filings

11. On May 2, 2005, Energytec registered its common stock with the Commission on Form 10, which became effective by operation of law on July 1, 2005. By virtue of this registration,

Energytec became obligated to file periodic and other reports with the Commission. The Form 10 listed Lambert as Energytec's "Executive Vice President and Chief Operating Officer" and stated that "[f]or over five years prior [to joining Energytec in 2002] he was self-employed through American Energy Development Associates, an oil and gas consulting and financial advisory firm in Dallas, Texas." It further said that Lambert earned "a JD from the University of Houston Law Center (1973)." Energytec included the same biographical information in three amendments to the Form 10 (filed on June 24, 2005, September 19, 2005, and November 18, 2005). On March 20, 2006, Energytec filed a current report on Form 8-K, announcing that Lambert had become its CEO, and, on July 21, 2006, it filed an annual report on Form 10-K for the year ending December 31, 2005. These reports contained substantially the same Lambert biographical disclosure that appeared in the Form 10. Lambert reviewed the Form 10 and signed the 8-K and 10-K before filing. In his capacity as CEO, he also certified the truthfulness of the statements in the Form 10-K.

12. These filings omitted material information about Lambert's background necessary in order to make the statements made about his background not misleading. On the one hand, they purported to disclose Lambert's employment history for "over five years" prior to joining Energytec, stating that he had received a JD in 1973. But they omitted to disclose that, during the same period, he was employed as a lawyer and that he surrendered his law-license in 1994 in a state-bar disciplinary proceeding. Likewise, they omitted his securities-related felony conviction, his incarceration and supervised release for this crime, and his multiple bankruptcies, all of which occurred during the same period. As a result of these omissions, the statements actually made about Lambert's background were rendered misleading.

13. The filings also misrepresented Lambert's employment history. He was not employed by

American Energy Development Associates for over five years before joining Energytec in 2002. In fact, American Energy Development Associates did not exist until 2000, when Lambert began doing business under that name.

FIRST CLAIM

(Violations of Exchange Act Section 10(b) and Rule 10b-5)

14. The Commission realleges paragraphs 1 through 13.
15. Section 10(b) and Rule 10b-5 of the Exchange Act [15 U.S.C. § 78j (b) and 17 C.F.R. § 240.10b-5] provide that it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange: (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.
16. As a result of the foregoing, Lambert violated, and unless restrained and enjoined will continue to violate, Section 10(b) and Rule 10b-5 of the Exchange Act [15 U.S.C. § 78j (b) and 17 C.F.R. § 240.10b-5].

SECOND CLAIM

(Aiding and Abetting the Violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, and 13a-11 thereunder)

17. The Commission realleges paragraphs 1 through 16.
18. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-11 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-11], provide that issuers of

Exchange Act registered securities must file with the Commission annual reports (Form 10-K), current reports (Form 8-K), and registration statements (Form 10) that, among other things, do not contain untrue statements of material fact or omit to state material information necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Form 10-K, Item 10 requires disclosure of any bankruptcy filing by a director or executive officer within the previous five years pursuant to Exchange Act Regulation S-K, Item 401(f)(1) [17 C.F.R. § 229.401(f)(1)].

19. As a result of the foregoing, Energytec violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-11 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-11].

20. As a result of the foregoing, Lambert aided and abetted Energytec's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, and 13a-11 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-11] and, unless restrained and enjoined, will continue to aid and abet such violations.

(Violations of Exchange Act Rule 13a-14)

21. The Commission realleges paragraphs 1 though 20.

22. Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] requires, among other things, that the principal executive officer of issuers of Exchange Act registered securities (such as Energytec) must sign a certification that the filed annual report (Form 10-K) does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which such statements were made, not misleading.

23. As a result of the foregoing, Lambert violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Permanently enjoin Lambert from violating Sections 10(b) and Rules 10b-5 and 13a-14 of the Exchange Act [15 U.S.C. § 78j(b) and 17 C.F.R. §§ 240.10b-5 and 240.13a-14] and from aiding and abetting violations of Section 13(a) and Rules 12b-20, 13a-1, and 13a-11 of the Exchange Act [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-11];

II.

Order Lambert to pay a civil monetary penalty in the amount of \$50,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

III.

Permanently bar Lambert from acting as an officer or director of any reporting company pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and

IV.

Grant such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

Dated: April 18, 2008

Respectfully submitted,

Timothy S. McCole
TIMOTHY S. MCCOLE
Mississippi Bar No. 10628
Attorney in Charge
JOHN K. POPHAM, of Counsel
Texas Bar No. 16139205

SECURITIES AND EXCHANGE
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Attorneys for Plaintiff

Case 3:08-cv-00683-B CIVIL COVER SHEET Page 9 of 9 PageID 9

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFFS

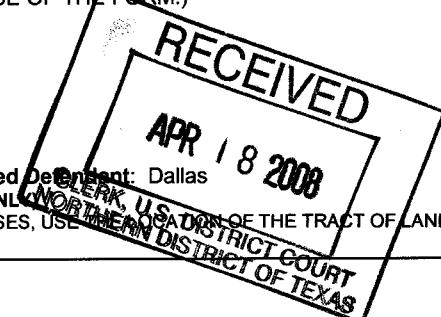
U.S. SECURITIES AND EXCHANGE COMMISSION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Timothy McCole, Esq.
Securities & Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6453

DEFENDANTS

DON L. LAMBERT

County of Residence of First Listed Defendant: Dallas

(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

308 CV - 683 - B

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- | | |
|---|--|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES
(For Diversity Cases Only)

	PTF	PTF	(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)	PTF	PTF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery OF Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 850 Securities Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		PROPERTY RIGHTS	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 820 Copy rights	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 830 Patient	<input type="checkbox"/> 892 Economic Stabilization Act
			<input type="checkbox"/> 840 Trademark	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 864 SSID Title XVI	
			<input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|--|---|--|---|--|---|---|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (Specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge |
|--|---|--|---|--|---|---|

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-14 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-14]

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:
 UNDER F.R.C.P. 23 JURY DEMAND YES NO

VIII. RELATED CASE(S) (See Instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

April 18, 2008

SIGNATURE OF ATTORNEY OF RECORD

Timothy McCole

FOR OFFICE USE ONLY

Receipt #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE